IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4270 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ODHUBHA ALIAS KIRITSINH AMARSINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4270 of 1993

MR RA MISHRA for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/04/2004

ORAL JUDGEMENT

Being aggrieved and dissatisfied by the order dated 20.4.1992 passed by the Gujarat Revenue Tribunal, in Revision Application No. TEN.B.R-28/88 and also the order passed by the Gujarat Revenue Tribunal dated 21.9.1992, in Review Application, the petitioner has

preferred the present Special Civil Application under Article 226 of the Constitution of India.

The entire history of the case and the proceedings which are initiated and concluded earlier are not required to be stated in detail at present.

The Mamlatdar and ALT by order dated 24.11.1976 declared 67 acres and 26 gunthas of land as excess vacant land under the provisions of the Gujarat Agriculture Land Ceiling Act (hereinafter referred to as "the ALC Act"). Being aggrieved and dissatisfied, the petitioner preferred an appeal before the Assistant Collector, Gondal, who by his judgement and order dated 24.5.1977, declared 27 acres and 5 gunthas of land as excess vacant land, against which the petitioner preferred Revision Application before the Gujarat Revenue Tribunal, which was allowed and the case was remanded to the Deputy Collector, Gondal. The Deputy Collector, Gondal by his judgement and order dated 30.6.1984 declared certain land as excess vacant land, against which the petitioner preferred Revision Application before the Gujarat Revenue Tribunal, and Gujarat Revenue Tribunal quashed and set aside order passed by the Deputy Collector dated 30.6.1984 and remanded the matter to the Mamlatdar and ALT. On remand, the Mamlatdar and ALT declared certain land as excess vacant land and against which an appeal was preferred before the Deputy Collector and Deputy Collector dismissed the same, against which the petitioner had preferred Revision Application No. TEN.BR-28/88 before the Gujarat Revenue Tribunal.

It was submitted by the petitioner before the Gujarat Revenue Tribunal that he had two minor sons as on 1.4.1976 and under the provisions of the ALC Act, the said two sons were also entitled to 1/5th unit each and therefore, it was contended that the order passed by both the authorities below declaring the excess vacant land without giving 1/5th unit each to these minor sons is required to be quashed and set aside.

The Gujarat Revenue Tribunal, by its judgement and order dated 20.4.1992, dismissed the said Revision Application, however, remanded the matter to the Mamlatdar and ALT to decide the question with regard to giving 1/5th unit to each of the minor sons and to consider whether as on 1.4.1976 the said sons were minor or not.

It seems that on the basis of the judgement of this Court, reported in 1984 Gujarat Law Herald 1001,

according to the petitioner, even the daughters were also required to be given 1/5th unit and therefore, the petitioner had filed a Review Application before the Gujarat Revenue Tribunal. In the said Review Application, the petitioner requested that the Mamlatdar and ALT be also directed to decide the question with regard to the claim of the applicant. In the said Application, learned Advocate has stated that the said Review Application was filed by the petitioner under Section 152 of the Civil Procedure Code. The Tribunal, taking a too technical view dismissed the said Review Application by its order dated 21.9.1992, on the ground that the Review Application is maintainable under Section 17 of the Bombay Land Revenue Tribunal Act, and as the application was not one under Section 17 and not in proper format, the same is not maintainable and therefore, he did not decide the said Review Application. It is pertinent to note that at the time of hearing of the aforesaid Application, an oral request was made on behalf of the petitioner to treat the said Review Application as one under Section 17 of the Bombay Land Revenue Tribunal Act, but taking a too technical view, the Gujarat Revenue Tribunal did not consider the said application as one under Section 17 of the Bombay Land Revenue Tribunal Act, and dismissed the same.

Being aggrieved and dissatisfied by the aforesaid two orders passed by the Gujarat Revenue Tribunal i.e.the jdugement and order dated 20.4.1992 passed in Revision Application No. TEN-BR/28/88 and also order passed by the Gujarat Revenue Tribunal dated 21.9.92 in Review Application in Revision Application No.TEN-BR/28/88, the present Special Civil Application is filed under Article 226 of the Constitution of India.

Learned Advocate submitted that the order passed by the Gujarat Revenue Tribunal dated 21st September, 1992 in Revision Application No. TEN.BR-28/88 is required to be quashed and set aside as the same is not tenable in law at all. Mr. Mishra, learned Advocate appearing on behalf of the petitioner has requested this Court to consider the case on merits also as the validity of the order passed in Revision Application No. TEN.BR-28/88 is also challenged in the present Special Civil Application. Mr. Mishra has submitted that as the daughters are also entitled to some land in view of the judgement and order passed by this Court, reported in 1984 Gujarat Law Herald p. 1001, it would be appropriate to direct Mamlatdar and ALT to decide the question with regard to considering the claim of the daughters of the petitioner also in view of the aforesaid judgement of

this Court, as such matter is already remanded by the Gujarat Revenue Tribunal to consider the question of giving 1/5th unit to the minor sons of the petitioner.

On the other hand Shri K.T. Dave, learned Asstt. Government Pleader appearing on behalf of the State Government has not seriously objected to directing the Mamlatdar and ALT, for considering the claim of the daughters of the petitioner in light of the judgement of this Court reported in 1984 Gujarat Law Herald p. 1001, since the matter is otherwise remanded to the Mamlatdar ALT to consider the claim of giving 1/5th unit to the minor sons.

In view of the aforesaid facts and circumstances of the case, the Mamlatdar and ALT i.e. respondent No.2 is hereby directed to decide the question of considering claim of the daughters of the petitioner in light of the judgement of this Court, reported in 1984 Gujarat Law Herald page 1001 at the time of considering the claim of giving 1/5th unit to the minor sons of the petitioner. This Court has not expressed any opinion whether the petitioner and his daughters are entitled to any unit and/or others have any claim. It is ultimately for the Mamlatdar and ALT - respondent No.2 to consider the claim and to decide the case in accordance with law considering the judgement of this Court, which is reported in Gujarat Law Heralad page 1001. Such an exercise is required to be undertaken by the respondent No.2 within a period of six months from the date of receipt of this order.

In this circumstance, the petition is allowed. Rule is made absolute with no order as to costs.

(M.R. Shah, J.)
*/Mohandas